



Federal Communications Commission  
Washington, D.C. 20554

August 1, 2007

DA 07-3495

Thomas H. Murphy  
4206 Hammock Dr.  
Fort Wayne, IN 46818

RE: Application FCC File No. 0002932217

Dear Mr. Murphy:

This letter is in regard to the above-referenced application that you filed on March 2, 2007, for authorization to operate a new Industrial/Business Pool station on eight pairs of airport terminal use (ATU) frequencies in Las Vegas, Nevada.<sup>1</sup> Three airlines operating at McCarran International Airport in Las Vegas filed petitions to deny the application.<sup>2</sup> On June 28, 2007, you filed a consolidated opposition to the petitions.<sup>3</sup> For the reasons stated below, we grant the petitions, and will dismiss the application.

Pursuant to Section 90.35(c)(61) of the Commission's Rules, ATU frequencies are available within ten miles of specified airports (including McCarran) only to "persons furnishing commercial air transportation service or, pursuant to § 90.179, to an entity furnishing radio communications service to persons so engaged."<sup>4</sup> You state that you will offer radio communications service to eligible entities at the airport.<sup>5</sup>

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<sup>1</sup> FCC File No. 0002932217 (filed Mar. 2, 2007, amended Mar. 16, 2007) (Application). Two additional frequency pairs were deleted from the Application.

<sup>2</sup> See United Airlines Petition to Deny (filed March 15, 2007); Skywest Airlines Petition to Deny (filed March 20, 2007); Southwest Airlines Petition to Deny (filed March 21, 2007).

<sup>3</sup> Letter dated June 28, 2007 from Tom Murphy to Federal Communications Commission (Opposition). It does not appear, however, that you served the Opposition on the petitioners, as required by the Commission's Rules. See 47 C.F.R. § 1.939(c).

<sup>4</sup> 47 C.F.R. § 90.35(c)(61)(i). These frequencies were set aside for ATU use so that aircraft at designated airports could readily communicate with each existing air terminal system. See Amendment of the Commission's Rules Concerning Airport Terminal Use Frequencies in the 450-470 MHz Band of the Private Land Mobile Radio Services, *Report and Order*, WT Docket No. 02-318, 20 FCC Rcd 1966, 1969 ¶ 6 (2005) (citing Amendment of Parts 89, 91, 93, and 95 (Formerly 10, 11, 16, and 19) of the Commission's Rules to Reduce the Separation Between the Assignable Frequencies in the 450-470 Mc/s Band, *Second Report and Order*, Docket Nos. 13847, 11959, 11991, 11994, 11 F.C.C. 2d 648, 655 ¶ 20 (1968)).

<sup>5</sup> See Application at Frequency Justification. In your Opposition, you clarify that you intend to provide such services for small air carriers that do not operate their own ATU networks. Opposition at 2.

We agree with the petitioners<sup>6</sup> that you have not established your eligibility for ATU frequencies. You do not indicate that any carrier has agreed to receive service from you, or even expressed interest in the service. The application appears to be speculative, rather than directed toward an existing need.<sup>7</sup> Moreover, even assuming that you are eligible for ATU frequencies, you have not demonstrated a need for the amount of spectrum requested, as required by Section 90.35.<sup>8</sup>

In addition, we note that most of your requested frequencies overlap 25 kHz ATU channels already in use at McCarran.<sup>9</sup> You do not explain how your proposed station will be able to operate without causing interference to these operations, especially in light of the much higher power level you propose.<sup>10</sup>

Finally, we note that your stated intention to serve “[o]ff-site locations includ[ing] the innovative remote baggage check points at the convention center, and other tourist sites,”<sup>11</sup> appears to conflict with the requirement that ATU frequencies be used “only in connection with servicing and supplying of aircraft.”<sup>12</sup>

Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.939 of the Commission’s Rules, 47 C.F.R. § 1.939, that the petitions to deny filed by United Airlines on March 15, 2007, Skywest Airlines on March 20, 2007, and Southwest Airlines on March 21, 2007, ARE GRANTED, and application FCC File No. 0002932217 SHALL BE DISMISSED.

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<sup>6</sup> See United Airlines Petition to Deny at 1-2; Skywest Airlines Petition to Deny at 1; Southwest Airlines Petition to Deny at 1.

<sup>7</sup> See Viking Dispatch Services, Inc., *Order*, 10 FCC Rcd 12769, 12770-71 ¶¶ 5-13 (WTB 1995).

<sup>8</sup> See 47 C.F.R. § 90.35(e) (more than one frequency pair will be assigned for mobile operations by a single applicant in a given area only upon a satisfactory showing of need).

<sup>9</sup> See, e.g., licenses for Stations KCB438, KYM469, WPBS587, WPDP858, WPMS404, WPRF629, and WRZ760.

<sup>10</sup> Specifically, you seek to operate with one hundred watts effective radiated power (ERP), the maximum permitted under 47 C.F.R. § 90.35(c)(61)(i), while other ATU licensees at McCarran utilize twenty-five watts or less ERP. See also 47 C.F.R. § 90.173(b) (applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference).

<sup>11</sup> See Application at Frequency Justification.

<sup>12</sup> 47 C.F.R. § 90.35(c)(61)(i).

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone  
Deputy Chief, Mobility Division  
Wireless Telecommunications Bureau